REMARKS

The telephone conference with Examiner Marx on August 23, 2004 is gratefully acknowledged.

In the Office Action dated June 28, 2004, the Examiner withdrew Claims 11 through 16 and Applicant confirms that it has canceled these claims without prejudice to filing a divisional application. The Examiner also rejected Claim 1 as being vague and indefinite for including the term "active humic compounds". In response, the Applicant has now amended Claim 1 to recite the phrase "catabolic breakdown products of the barley straw." Such language is used in lines 8-9 of page 7 of the specification and no new matter has been added. Applicant believes those skilled in the art would readily appreciate that this phrase refers to organic compounds resulting from fermentation of barley straw and aqueous solution.

Claims 1 and 4-6 have been rejected as being anticipated by Richards et al. Claims 1-6 and 8-10 have been rejected as being anticipated by Ely et al. and Claims 1-10 have been rejected as being obvious over Ely et al. taken with Richards et al. and Jeffreys. The Examiner alleges that all claims have been anticipated except for Claim 7 which the Examiner alleges is obvious in view of the combination of three prior art references. In response, Applicant has amended the claims so that remaining independent Claim 1 incorporates all of the limitations of Claim 7 as well as some added limitations. Applicant has also provided arguments as to why the present invention is neither obvious nor anticipated by the cited prior art.

The Richards et al. patent discloses a method of making a humus type fertilizer from nitrogenous waste water. Nitrogenous waste water is passed over successive beds of straw or similar material. After a minimum of ninety hours, the resulting composition is referred to as a manure, see page 3, line 24. It may be allowed to rot for an extended period of time of about three months in which it loses dry matter.

This is a thick, moist material well suited as fertilizer. Nothing in the disclosure teaches or suggests that this method of making a thick, moist fertilizer in any way enhances methods for clarifying water or that suitable material may be made in less than 90 hours.

The patent to Ely et al. relates to a method for preparing an additive for animal feed. Despite the similarities in composition with that described in Richards et al., there is nothing to teach that method for preparing livestock feed should be combined with fertilizer. Those skilled in the art will appreciate that plant fertilizer and animal feed are very different products and the production of them are different arts. Not only is there nothing to suggest combining these two inventions, there is nothing to indicate that such a combination could be used for clarifying water. Those skilled in the art will appreciate that in general both fertilizer and animal feed tend to pollute water and encourage the growth of algae, fungus and other organisms that are typically associated with unclear, dirty water. When excessive fertilizer is added to a body of water, it is generally harmful for the fish and the water becomes overrun with green plant life and microorganisms such as algae and moss.

The patent to Jeffreys teaches a method of growing a substantial amount of anaerobic bacteria. The process requires that a bed of material be formed in an incubator so that it forms into an aerobic and an anaerobic layer underneath. Nothing in the prior art or the other references alludes to any need to form such layers. The Jeffreys patent does suggest that its invention may be used to treat water having raw sewage in it. There is nothing to suggest that combining this disclosure with the previous two would form a method for clarifying water. This disclosure may perhaps suggest that the Jeffreys patent may be used to purify water that has been contaminated with the fertilizer disclosed in Richards or even the animal feed disclosed in Ely et al. Because the Richards patent discloses a fertilizer, referred to as a "manure" in the disclosure and very similar to sewage, the prior art would suggest that combining Richards with Jeffreys

would be counter productive. Furthermore, Jeffreys teaches that the anaerobic component of the invention is the vital improvement disclosed. In both the present invention and the two cited references, the anaerobic bacteria will not survive for any substantial amount of time. This further teaches away from combining Jeffreys with the cited prior art.

In summary, the combination of Richards, Jeffreys and Ely does not achieve the claims of the present invention.

It is improper to combine references to achieve the invention under consideration unless there is some incentive or suggestion in the references to do so.

The Court of Appeals for the Federal Circuit has repeatedly held that under Section 103, teachings from various references can be combined only if there is some suggestion or incentive to do so. ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F2d 1572, 221 USPQ 929 (CAFC 1984).

> Stated another way:
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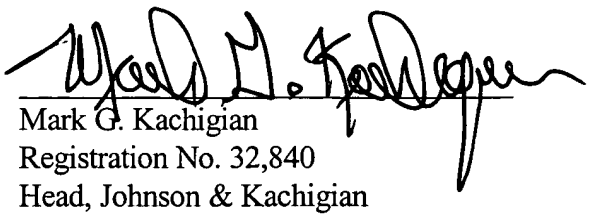
> > It is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps...The references themselves must provide some teaching whereby the applicant's combination would have been obvious. In re Gorman, 18 USPQ2d 1885 (CAFC 1991).

The Examiner is required to follow the law as set forth by the Federal Circuit. In summary, the combination of three disparate patents to achieve the claims of the present invention is untenable.

The remaining dependent claims are dependent on Claim 1 and believed allowable for the same reasons.

It is believed that the foregoing is fully responsive to the outstanding Office Action. If any further issues remain, a telephone conference with the Examiner is respectfully requested.

Respectfully submitted,



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